# ARA SUBMISSION

## CONSULTATION ON THE NEW ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (AML/CTF) RULES 2024

February 2025

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to AUSTRAC regarding the draft Anti-Money Laundering and Counter-Terrorism Financing Rules 2024 (the Draft Rules), which are intended to supplement the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 (the Amendment Act).

The ARA is the oldest, largest and most diverse national retail body, representing a $430 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

The ARA welcomes efforts to simplify and modernise Australia's AML/CTF regime, building on feedback from the first round of consultations. We believe the Draft Rules create efficiencies and provide clarity on key issues. However, we are concerned that there remains uncertainty regarding the intended scope and applicability of certain aspects of the Draft Rules.

### 1. Value Transfer

*Remittance services*

We consider further guidance is required to:

1. clarify the applicability of the Incidental Exemption, including whether certain factors must be taken into account for this analysis;
2. confirm via the updated Draft Rules that persons who receive and pass on a transfer message incidentally to another service are not intermediary institutions, noting the Amendment Act does not expressly extend the Incidental Exemption to intermediary institutions.

We consider further guidance is required from AUSTRAC on the above issues through amendments to the Draft Rules and supplementary guidance papers. We believe this is critical for ensuring the regime remains proportionate and appropriately focused on operators that perform these activities as a core function.

*Incidental Exemption*

There is limited guidance on when the Incidental Exemption is intended to apply in the explanatory material in relation to the Amendment Act. The Explanatory Memorandum to the Amendment Act (EM) suggests that the intention is for the Incidental Exemption to have broad application – available to any person that transfers money incidentally to another service that is not the transfer of value. This would also be consistent with the approach taken by AUSTRAC in granting exemptions in relation to the existing payment designated services. In many of these exemptions, the transfer of money was not the primary purpose of the arrangement but was incidental to another service (for example, fleet management, lay-by administration services, a share registry and a marketplace).

- *Marketplaces, food-delivery services etc.*
    - We consider examples of operators that make money available, or accept an instruction for the transfer of money, incidentally to the provision of another service, might include ride-sharing services for online deliveries, gig-economy workers providing food delivery services and online marketplaces. While value transfer to such drivers and merchants is a component of these business models, these transfers are ancillary to the provision of other core services (i.e., transport services, food delivery services, listing and sale of goods). We assume many of these operators will already be engaging other payment service providers that are or will be registered with AUSTRAC to receive and disburse funds to third parties, and, as such, the policy objective of ensuring that those third parties are subject to appropriate CDD and KYC checks is likely to already be met.
- *Gift cards*
    - Further, we consider the application of the Incidental Exemption (and the Amended Act overall) to non-bank issuers of gift cards may become less clear under the Amended Act. In recognition of the lower ML/TF risk posed by low-value stored value cards, under the current AML/CTF Act, issuers of gift cards that fall under the thresholds set out in items 21 to 24 (Under-the-Threshold GCs) are not captured by those items. Further, provided an issuer of an Under-the-Threshold GC is not an Authorised Deposit Institution (ADI), bank, building society, credit union or prescribed in the AML/CTF Rules, it does not provide an item 29 or 30 designated service and may not otherwise be captured.
    - However, because the Draft Rules expand the definition of "ordering institution", it is possible non-bank issuers of Under-the-Threshold GCs may be required to enrol and comply with the Amended Act if they accept an instruction for a transfer of value card that is used for payment. This appears inconsistent with the specific exclusion of these types of cards under items 21-24. It may also mean that retailers which issue Under-the Threshold GCs that can be used to pay a merchant other than the issuer (and accordingly involve a transfer of value) may be caught. This could include, for example, the issuer of a low value gift card that can be utilised to purchase a t-shirt from a third party.
    - Similar to the arguments above, we consider there are good arguments that the value transferred when these types of cards are used is incidental to the issuance and management of these cards (noting those activities might themselves be incidental to the operation of a marketplace, digital platform, or group of retail stores). To appropriately manage ML/TF risk, consideration should be given to ensuring the Incidental Exemption applies to non-bank issuers of Under-the-Threshold GCs, and that gift cards should be captured by items 21-24.
    - Requiring non-bank issuers of low-value gift cards to comply with the Amended Act because they facilitate incidental value transfers would be disproportionate to the actual ML/TF risks posed by low-value stored value cards and could impose unintended regulatory burdens on retailers and digital platforms whose primary business are not financial services. The transfer of value in these cases is merely ancillary to the core business of selling goods and services, and the issuance and management of gift cards is itself incidental to operating retail businesses or digital marketplaces. Extending the Incidental Exemption to these issuers would be consistent with the existing risk-based framework and avoid unnecessary compliance costs for businesses that could ultimately impact consumer access to widely-used retail products.

To assist industry to assess the applicability of the Incidental Exemption, we recommend that AUSTRAC work with industry to issue more detailed guidance on what is a 'core' vs. 'incidental' service, with additional examples beyond those provided in AGD Paper 4 and the EM.

*Extending the Incidental Exemption to Intermediary Institutions*

We consider the description of intermediary institution to be overly broad, creating ambiguity that leaves open to the interpretation whether any entity passing on information about a payment instruction should be captured. We do not consider it was the drafters' intention to capture entities that pass on a transfer message incidentally to another service within the ambit of intermediary institutions. We consider it would be an unusual outcome if, in respect of a transfer of value, the person accepting the instruction is not considered an ordering institution (on the basis of the incidental exemption) and the person making the value available to the transferee is not considered a beneficiary institution (on the basis of the incidental exemption) but an intermediary institution that passes on the message is unable to rely on the same exemption and is subject to obligations under the AML/CTF Act.

We therefore suggest AUSTRAC specify in the updated Draft Rules that persons who receive and pass on a transfer message incidentally to another service are not intermediary institutions. Without this clarification, we consider industry will continue to face significant uncertainty on whether or not certain types of operators (e.g., a marketplace, or ride-sharing service provider) may provide an item 29 or 31 designated service if they pass on or accept a message that contains information relating to a customer's instruction to transfer money. Consistent with this logic, we consider that the issuers of gift cards should not be regarded as providing an item 29 designated service because they accept instruction incidentally to the provision of issuance and management of the card program.

*Risk-based Approach and Potential Impact on Retailers*

Retailers selling on marketplaces and retailers who offer products on their store through a marketplace model remain, at their core, retailers and should be outside of the scope of this regime. Capturing retailers and marketplaces under this regime would impose onerous requirements on a broad range of businesses – driving up compliance costs which would likely be passed on in some form to other small businesses and customers, and potentially impeding innovation and growth in the Australian retail sector adversely impacting Australian consumers and the wider economy. We note retailers typically employ a variety of controls which mitigate the risk of abuse throughout the entire AML/CTF lifecycle, through robust merchant registration requirements, sanctions screening to actual goods delivery and funds disbursement. These controls provide retailers with confidence that their stores are being used for the purchase of goods, and that instances of abuse are either prevented, or detected and stopped, at the earliest.

We also note retailers that are in the funds flow will generally be working with duly registered payment service provider(s) to receive and disburse funds to merchants. Capturing such retailers within the AML/CTF regime would therefore impose a duplicative compliance burden, which we consider is unjustified given the role of the other providers in the value chain and the protections those parties already have or will have in place as a result of these reforms.

## 2. Compliance Timelines

We understand most of the proposed changes take effect from 31 March 2026. They are likely to require significant updates to existing AML/CTF Programs and related procedures, as well as adding significant compliance requirements to entities that will be brought into scope of the regime through the proposed reforms. Given the detailed underlying requirements are not yet available to industry, we are concerned that the March 2026 compliance timeframe may not be realistic for organisations given the complexity of the requirements contemplated by the reforms. In particular, we note that the obligations imposed on ordering, intermediary and beneficiary institutions under Part 5 of the Amended Act will require significant technological infrastructure to be built. These technology development projects cannot be appropriately scoped and commenced until the draft Rules are finalised and guidance is issued. We therefore recommend that the timeframe for commencement be extended, for a minimum of 18 months from when the updated AML Rules are finalised and guidance is issued, to allow organisations sufficient time to make necessary adjustments to come into compliance.

**3. Customer Due Diligence**

We anticipate several practical implementation challenges in meeting the proposed customer due diligence (**CDD**) obligations, in particular in relation to customers that are domiciled or resident outside of Australia. The varied documentation standards across jurisdictions make verification particularly complex. We must also balance the need for swift customer onboarding with thorough due diligence requirements, while maintaining effective ongoing monitoring of millions of transactions.

To address these challenges while achieving the intended regulatory outcomes, we propose several alternative approaches to achieve optimal balance between risk and onerous compliance.

- Simplified CDD: For customers who have been assessed as having low ML/TF risk based on the entity's risk assessment, we would like to propose that the Draft Rules or guidance make clear that automated KYC procedures be allowed as part of simplified CDD, such as verifying CDD information through screening national databases. We understand AUSTRAC intends to issue industry guidance; it would be helpful if AUSTRAC can include details of any national databases that entities could leverage on for this purpose.

- Ongoing CDD: For customers with low ML/TF risk, we propose that ongoing customer due diligence be conducted only when there is a triggering event (e.g. when a significant transaction takes place, when there is a material way in which the customer's account is operated, when the entity's policies relating to the documentation of CDD information change substantially, etc). As these customers have low ML/TF risk to begin with, requiring more frequent refreshes of their CDD would be unduly onerous and also add unnecessary friction. In the same vein, we would also like to propose that AUSTRAC provide guidance on what simplified measures means in this context and, in particular, whether any of the requirements under sections 28(2) and (3) or section 30(2) may be modified.

- Verification of business address: We understand that the draft Rules would require reporting entities to collect and verify any registered office and principal place of business or operations of a non-individual customer or an individual customer where the designated service relates to the customer's conduct of a business. We would like to propose that verification of the addresses not be mandated. We note that although Financial Action Task Force (**FATF**) Recommendation 10 contemplates, as part of customer due diligence for legal persons and arrangements, the collection of a customer's registered office address and, if different, a principal place of business, it does not state that this information needs to be verified.

*Strengthening Domestic Due Diligence for Resellers*

The ARA recommends strengthening CDD requirements for high-volume resellers as part of Australia's AML/CTF framework. Organised retail crime (ORC) groups frequently exploit online marketplaces to resell stolen or fraudulently obtained goods, creating money laundering risks by introducing illicit funds into legitimate financial channels.

Drawing from international examples such as the INFORM Consumers Act in the United States, implementing enhanced due diligence requirements for high-volume third-party sellers—such as mandatory business registration, provision of tax identification numbers, and verification of bank account details—could help mitigate these risks. Strengthening domestic CDD requirements in this way would reduce opportunities for illicit financial activity while maintaining a balanced, risk-based regulatory approach that minimises unnecessary burdens on legitimate businesses.

*KYC Requirements for Gift Cards*

We consider that a risk-based approach to initial and ongoing CDD should be adopted. Imposing KYC requirements on gift card redeemers would create significant operational burdens for merchants while delivering questionable benefits for efforts to address AML/CTF concerns. Such requirements would dramatically slow transaction times, increase costs, and frustrate legitimate customers who expect to use gift cards for routine purchases without additional verification. The process would be particularly cumbersome, requiring merchants to collect and verify identification documents, maintain secure storage systems for sensitive personal data, and train staff in complex compliance procedures - all at the point of sale where speed and efficiency are crucial. For small and medium retailers already operating on thin margins, implementing KYC infrastructure and training staff would represent a substantial expense and administrative burden. The onerous nature of these requirements would be especially challenging during peak trading periods, potentially creating lengthy queues and customer dissatisfaction. At a macro level, these requirements could affect an important revenue stream and customer engagement tool.

Furthermore, targeted approaches already exist to combat money laundering through gift cards, such as enhanced monitoring of bulk purchases, suspicious transaction reporting, and coordination with financial intelligence units. These established methods can achieve regulatory objectives more efficiently than broad KYC requirements that would primarily impact legitimate consumers and businesses.

If AUSTRAC considers that an item 29 designated service is provided in respect of all payments made using gift cards (including gift cards that fall under the thresholds set out in items 21 to 24), it is crucial to modify initial and ongoing CDD requirements to align with a risk-based approach. Rather than applying blanket KYC requirements to all gift card transactions, a more targeted framework could require verification only for high-value transactions that exceed specific thresholds (for example, $1,000 or more). This approach would align with established international standards, such as FATF Recommendation 10, which advocates for simplified due diligence measures where lower risks are identified. It would also be consistent with existing practices in other jurisdictions – for instance, in Singapore, customer due diligence is exempted if the currency equivalent of the e-money or the amount of money contained in the payment account does not exceed S$1,000, while the USA PATRIOT Act requires enhanced scrutiny only for transactions exceeding US$10,000. In Canada, FINTRAC guidelines similarly apply graduated CDD requirements based on transaction values. This risk-based framework would create a more proportionate response to money laundering risks while minimising the impact on routine, lower-value transactions that represent the vast majority of legitimate gift card usage. Such thresholds would better balance regulatory objectives with practical business operations, allowing merchants to focus compliance resources on higher-risk transactions while maintaining efficient service for everyday customers. By implementing monetary thresholds, regulators can achieve their oversight objectives while avoiding unnecessary burden on merchants and customers engaged in low-risk, ordinary retail transactions.

**4. Reporting Groups**

The lead entity of a reporting group formed automatically under section 10A(1)(a) of the amended AML/CTF Act will be determined in accordance with section 8(2) of the Draft Rules, which requires the lead entity to (among other requirements) control all other members of the group who provide a designated service. This requirement may be difficult to apply because there may be multinational corporate structures where an Australian reporting entity does not control all other entities in the reporting group that provide designated services.

One option for section 8(4) (the rule that specifies the lead entity in a reporting group where the criteria in section 8(2) are not satisfied) would be to specify that the lead entity in a reporting group is the reporting entity that elects, in writing, to be the lead entity. This would enable reporting groups to consider which reporting entity in the group is most appropriately resourced to meet the additional obligations imposed on lead entities.

We would also like to propose that the reporting group only consists of the reporting entity and the companies that it controls which also provide designated services in Australia. In this way, there would also be less barriers for the reporting entity to implement any requirements such as data sharing, vis-à-vis imposing requirements upwards onto its parent company and other sister companies who do not provide designated services in Australia.

**5. Challenges for multinational organisations**

While the Draft Rules aim to strengthen Australia's AML/CTF framework, certain aspects may not adequately account for the complexity and scale of global operations typically undertaken by multinational organisations that maintain complex, globally integrated compliance programs that effectively manage risks across multiple jurisdictions. The proposed Rules' prescriptive nature could create additional operational complexity and potential conflicts with existing international compliance frameworks without delivering proportionate risk mitigation benefits.

We propose several alternative approaches that would support robust regulatory oversight and operational efficiency, while achieving the intended regulatory outcomes:

- First, we recommend adopting a principles-based approach that allows organisations to demonstrate how their existing global compliance frameworks meet or exceed Australian regulatory requirements. This would enable more efficient integration with established international best practices while maintaining robust oversight.
- Second, we suggest aligning with and explicitly recognising compliance with comparable international standards and allowing organisations to leverage existing global compliance frameworks where these meet Australian regulatory objectives. This would reduce duplication while maintaining high compliance standards.
- Third, we recommend enabling greater flexibility in how organisations structure their compliance operations, particularly regarding the use of global resources and systems. This could include provisions for global centres of excellence and shared services models that have proven effective in managing international compliance obligations.

- Fourth, we suggest developing clear frameworks for accepting global technology solutions and verification methods that meet or exceed local requirements. This would support operational efficiency while maintaining appropriate risk management standards.

The effectiveness of these measures could be enhanced through ongoing dialogue between regulators and industry participants to ensure the framework remains responsive to evolving global business models and technology capabilities while maintaining strong AML/CTF controls.

**6. AML/CTF Programs**

We understand that an independent evaluation report is to be obtained at least once every 3 years. We recommend that AUSTRAC update the Draft Rules or its existing guidance in relation to independent reviews to make clear that the independent evaluation is allowed to be conducted by the entity's Internal Audit function, rather than mandated to be conducted by an external party.

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Thank you again for the opportunity to provide a submission on these matters. We look forward to a continued open consultation now and into the future. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.